

APPENDIX II – GUARANTEE

[Note: *The instructions in brackets are to be replaced by the relevant information and the brackets deleted.*]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-640-80.

(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of 9 VAC 25-640 for assuring funding for taking containment and cleanup measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3). [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)][operator], guarantor guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall pay the funds to the State Water Control Board in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and cleanup for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9 VAC 25-91 the guarantor upon written instructions from the State Water Control Board shall pay the funds to the State Water Control Board in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator and the State Water Control Board. The guarantee will terminate 120 days from the date of receipt of the notice by operator and the State Water Control Board, as evidenced by the return receipt.

(5) Guarantor agrees to notify operator and the State Water Control Board by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to 9 VAC 25-91 or 9 VAC 25-640.

(7) Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of 9 VAC 25-640 for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator and the State Water Control Board, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator and the State Water Control Board, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-640 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: